

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

DAVID W. BUTLER,

Defendant.

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: CIVIL ACTION NO. 00-1827
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**PLAINTIFF’S MOTION TO FILE A SURREPLY
TO DEFENDANT’S REPLY MEMORANDUM
IN SUPPORT OF AMENDED MOTION FOR AN AWARD OF
ATTORNEYS’ FEES AND EXPENSES**

Plaintiff United States Securities and Exchange Commission hereby seeks leave of this Court to file the attached surreply to the Reply recently filed by Defendant David Butler in support of his amended application. The Commission’s surreply is offered for the limited purpose of correcting that portion of Butler’s Reply which fundamentally misstates the legal standard governing an applicant’s burden of demonstrating his eligibility to receive an award of fees under the Equal Access to Justice Act (“EAJA”), 28 U.S.C. 2412, and in order to address the revised arguments set forth in the Reply regarding Butler’s net worth as of September 14, 2000.

Dated: September 30, 2005

Respectfully submitted,

UNITED STATES SECURITIES and
EXCHANGE COMMISSION
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s/ Timothy N. McGarey
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